

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ALPHA KABA,

Plaintiff,

ORDER

- against -

CV 2008-2594 (JBW)(MDG)

DELIGHT CONSTRUCTION CORP.,

Defendant.

- - - - -X

Defendant Delight Construction Corp. moves for an extension of discovery to conduct depositions of four non-party witnesses. See ct. doc. 31. Plaintiff opposes an extension on the grounds that the defendant has not demonstrated "good cause" and that the plaintiff would be prejudiced. See ct. doc. 32.

DISCUSSION

Rule 16(b) of the Federal Rules of Civil Procedure provides that a scheduling order "shall not be modified except upon a showing of good cause." See Ewing v. Roslyn High School, 05-CV-1276, 2007 WL 1110745, at *1 (E.D.N.Y. Apr. 7, 2007); Corkrey v. Internal Revenue Service, 192 F.R.D. 66, 67 (N.D.N.Y. 2000); Fed. R. Civ. P. 16(b). A finding of "good cause" depends on the diligence of the moving party. Id.; see Fed. R. Civ. P. 16 advisory committee's note (1983 amendment, subsection (b)) ("the court may modify the schedule on a showing of good cause if it cannot reasonably be met despite the diligence of the party seeking the extension").

The defendant has not met its burden of showing good cause for an extension of discovery. While the defendant claims that the non-party witnesses "were recently disclosed by [p]laintiff," the defendants have known the identities of these witnesses for almost five months. See ct. doc. 32, Exh. 1. During that time, the Court held several discovery conferences with the parties at which plaintiff's counsel discussed his intention to use the testimonies of the defendant's employees to demonstrate a pattern and practice of the defendant's failure to pay overtime. At a conference held on June 26, 2009, counsel represented that discovery was completed except for the discrete issues that were discussed at the conference. See minute entry dated 6/29/09. The defendant simply has not shown the diligence required to justify extending discovery and has not offered any satisfactory reason for the failure to hold the depositions earlier.

CONCLUSION

For the foregoing reasons, the defendant's motion for an extension is denied.

SO ORDERED.

Dated: Brooklyn, New York
September 9, 2009

_____/s/
MARILYN D. GO
UNITED STATES MAGISTRATE JUDGE